



## Hearings Official

Phone: 541-682-5377  
www.eugene-or.gov/hearingsofficial

# AGENDA

**Meeting Location:**  
Sloat Room -- Atrium Building  
99 West 10<sup>th</sup> Avenue

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The Eugene Hearings Official welcomes your interest in these agenda items. Feel free to come and go as you please at any of the meetings. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours notice. To arrange for these services, contact the Planning Division at (541)682-5481.

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**WEDNESDAY, JULY 30, 2014**  
**(5:00 p.m.)**

### **I. PUBLIC HEARING ON APPEAL OF PLANNING DIRECTOR'S DECISION**

**Assessors Map:** 18-03-05-32      **Tax Lot:** 100

**Decision:** Denial of a Goal 5 Water Resources Conservation Plan Map Correction for Roosevelt Middle School (OC2 14-1)

**Appellant:** Jon Lauch, Eugene School District 4J

**Lead City Staff:** Gabe Flock, Senior Planner  
Telephone: (541) 682-5697  
E-mail: gabriel.flock@ci.eugene.or.us

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#### **Public Hearing Format:**

1. Staff introduction/presentation.
2. Public testimony from applicant and others in support of application.
3. Comments or questions from neutral parties.
4. Testimony from appellants and others in opposition to application.
5. Staff response to testimony.
6. Questions from Hearings Official.
7. Rebuttal testimony from applicant.
8. Closing of public hearing.

The Hearings Official will not make a decision at this hearing. The Eugene Code requires that a written decision must be made within 15 days of close of the public comment period. To be notified of the Hearings Official's decision, fill out a request form at the public hearing or contact the lead City staff as noted above. The decision will also be posted at [www.eugene-or.us/hearingsofficial](http://www.eugene-or.us/hearingsofficial).

# MEMORANDUM

**Date:** July 21, 2014

**To:** Fred Wilson, Eugene Hearings Official

**From:** Gabe Flock, Senior Planner

**Subject:** Appeal of Planning Director's Decision to Deny a Goal 5 Water Resources Conservation Plan Map Correction for Roosevelt Middle School (OC 2 14-1)

## **Background**

The subject property is located at 680 East 24<sup>th</sup> Avenue, between the Amazon Parkway and Hilyard Street, on Tax Lot 100 of Assessor's Map 18-03-05-32. The site is zoned Public Land with the Water Resource Overlay (PL/WR). This appeal pertains to the Planning Director's recent denial of the Eugene School District 4J's request for a "Type II map correction" involving a protected Goal 5 wetland (site AMA-10) located on the Roosevelt Middle School Site. For a vicinity map showing the school site and the location of the wetlands involved in this request, see Attachment A. In essence, if approved, the school district's request would remove the protection designation under the City's adopted Goal 5 Water Resource regulations for the southern portion of the wetland, which would then allow the wetland to be filled to accommodate a new school building. The Planning Director's decision denying the applicant's request is included for reference; see Attachment B.

## **Notice and Appeal**

On June 26, 2014, notice of the decision denying the applicant's request was provided in accordance with the Type II application procedures at EC 9.7220, which established an appeal deadline of July 8, 2014. On July 2, 2014, Bill Kloos filed an appeal of the Planning Director's decision on behalf of Eugene School District 4J. See written appeal statement included as Attachment C.

The appeal statement sets out two primary assignments of error. Because the appellant's statement only briefly sets out the appeal issues, and essentially re-asserts issues that were addressed in the decision, a brief initial staff response is provided below with reliance on the Planning Director's written decision for a more detailed explanation of the City's rationale as to why the application was denied. Staff anticipates that the appellant will submit more extensive, additional argument at the public hearing, which may necessitate further response from staff and the City Attorney's Office at or following the hearing.

The public hearing for this appeal is scheduled for July 30, 2014 and public notice was mailed in accordance with applicable code requirements on July 9, 2014. As described in the public notice, the decision on this appeal is subject to the procedural requirements of EC 9.7600 through 9.7635, and the public hearing for this appeal will be conducted according to quasi-judicial hearing procedures in state law and described at EC 9.7065 through 9.7095. Pursuant to EC 9.7630, the HO shall affirm, reverse, or modify the Planning Director's decision to deny the applicant's request. EC 9.7630(2) clarifies that the HO can only reverse or modify the Planning Director's decision if he finds that the Planning Director failed to properly evaluate the application or make a decision consistent with the approval criteria.

Since the submittal of the appeal, one letter of testimony has been received (see Attachment D). Any written testimony or other evidence submitted after the preparation of this report will also be forwarded for consideration as part of the decision on this appeal.

### **Appeal Issues and Staff Response**

The appeal issues are summarized below (in **bold**), followed by staff's initial response:

**Appeal Issue #1: The Director erred in concluding that the requested Goal 5 Plan map correction is not the kind of correction that can be done under the authority of EC 9.4960. That code section envisions just the kind of map correction that is requested here.**

The Planning Director addresses this issue about the scope of EC 9.4960 on pages 2-5 of the written decision. The analysis explains the rationale in detail, as to why the applicant's request cannot be approved as a map correction and instead would require a legislative amendment to the City's adopted Goal 5 regulations. Rather than a request to correct the mapped *location* of the wetland, which could be appropriate within the scope of EC 9.4960, the applicant's request would change (i.e. *remove*) the level of protection afforded to the wetland under the City's regulations. The Planning Director's decision includes an analysis of the text and context of EC 9.4960, as well as related legislative history, in reaching the conclusion that the applicant's request falls outside the intended scope of EC 9.4960. A useful excerpt summarizing that analysis is provided below:

Based on the text, context and legislative history, the Planning Director concludes that the council intended the process set forth in EC 9.4960 to be available as a means of correcting only certain mapping errors. In doing so, the council necessarily meant to limit the scope of that provision to a confined universe of situations where the error in mapping was relatively clear and could be discerned simply by reference to the documentation before it.

Given the history of the adoption of the Goal 5 water resources conservation plan and code provisions implementing that plan, this interpretation is the only one that makes sense. If a property owner could characterize the erroneous analysis of existing data as a mapping error, then there would be no limit to what would be considered a mapping error for purposes of EC 9.4960. Such an interpretation would allow an end run around the Goal 5 process. Each and every parcel that has the /WR overlay designation would be subject to challenge under EC 9.4960. An alleged error in analysis of the available data is not a mapping error. Rather, that is a challenge that properly should have been raised at the time the Goal 5 plan was adopted.

Here, the applicant asserts that the City made an error in its analysis of the data in front of it and, as a result, the mapping of the boundaries of the protected wetland was in error. This application does not allege a mapping error that can be corrected under the EC 9.4960 process. An example of a mapping error that would be subject to EC 9.4960 is the situation where the underlying information supports a conclusion that the wetland would be mapped in one location, but the mapping erroneously shows the wetland mapped in an entirely different location. An assertion that the City made an error in its analysis of the data that resulted in a piece of land erroneously being afforded protection is not a mapping error subject to correction under EC 9.4960. The applicant's attempt to challenge the City's prior analysis in this application is a collateral attack of the City's 2005 ordinance. The only remedy for the applicant at this point is to seek a legislative amendment, which would allow the City Council to re-analyze the data and determine what protections are appropriate.

The appeal statement asserts that the request here is not intended as new policy-making or to re-open the analysis for individual sites that was done in 2005, but rather, seeks to resolve a conflict between the map and text of the Goal 5 Plan. As such, the appellant believes that the request falls within the scope of EC 9.4960 as a Type II map correction. The assertions about a conflict between the text and map of the Goal 5 Plan, or that the text of the ESEE analysis has the same legal standing as adopted Metro Plan text which must be resolved in favor of the text over the adopted Goal 5 maps, are addressed in more detail under Appeal Issue #2, below.

**Appeal Issue #2: The Director erred in failing to correct the Goal 5 Plan map for this site, as requested. The denial is based on several legal errors that are apparent in the decision. The Hearing Official should correct the legal errors and then conclude, as the applicant asserts, that the Resource Site intended by the Goal 5 Plan to be protected is limited to the ash grove, as described in the ESEE – the text of the Goal 5 Plan.**

Here, the appellant asserts three "legal errors" under Appeal Issue #2, which if corrected by the Hearings Official, the appellant believes should allow the applicant's request to be approved as a Type II map correction.

**Legal Error (a): The Director erred in reading the Goal 5 Plan maps as being the only credible source of information in the plan for locating a Resource Site.**

This argument misconstrues the Planning Director's findings in the decision, regarding the legal standing of the ESEE analysis that was adopted as findings in support of the City's Goal 5 ordinance (Ordinance No. 20351). Here, without addressing the Planning Director's explanation in the decision as to why the ESEE analysis cannot be relied upon in the way that the applicant would prefer, the appellant turns to the definition of "Goal 5 Water Resource Site" at EC 9.0500. He asserts that the term "identified" is much broader than "mapped" and thus one should look to the entire plan to determine what the resource site is, and where it is located. No further explanation or analysis of the text, context or legislative history is provided in support of this argument which would appear to greatly expand the latitude and range of interpretation involved in determining both the location and level of protection afforded to wetland sites under the City's Goal 5 regulations (i.e. beyond what was

intended). As explained in the decision, even if the text of the ESEE analysis could be relied upon in the way that the applicant would like, the language itself does not support the contention that the City intended to only protect the ash grove portion of the wetland. The language the applicant points to is found in a brief summary description of the site, not in a section that purports to outline the purposes for which a particular resource site is to be protected.

**Legal Error (b): The Director erred by stating that the text of the ESEE is not part of the Goal 5 Plan.**

Again, this argument misconstrues what the Planning Director's decision really says, and how the relationship works between adopted refinement plans and the Metro Plan. As explained in the decision beginning on page 6, the City firmly disagrees with the applicant's assertions that the ESEE analysis somehow has the same legal standing as adopted Metro Plan text, which would in turn allow them to rely on the ESEE text to resolve an alleged "conflict" between the Metro Plan and the adopted Goal 5 refinement plan in favor of removing the protection designation. In its appeal statement, the applicant cites to OAR 660-023-0040(4) in support of its position that the ESEE analysis is equivalent to Metro Plan text. OAR 660-023-0040(4) provides: "The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation."

However, the fact that the ESEE consequences are adopted as part of the plan does not mean that every word in the ESEE consequences analysis must be treated as if it were Metro Plan text. The decision clarifies that the ESEE analysis was only adopted as findings in support of the City's Goal 5 ordinance. To the extent they are part of the plan, they are supporting documentation of the plan text, much like a housing inventory is part of a local government's comprehensive plan. Accordingly, any language found in the ESEE analysis does not carry the same weight as Metro Plan text and cannot be used as the appellant asserts to override or "resolve a conflict" that would change the level of protection afforded to the wetland.

More importantly, the language of the ESEE analysis relied upon by the applicant does not support its contention that the City only intended to protect the ash grove. As the Planning Director found, the language the applicant relies upon is found in the "Site Description" portion of the ESEE analysis, which only provides a brief summary of each of the wetlands. The ESEE conclusions, however, make clear that the entire wetland is valuable, and should be protected, as it provides a diversity of wetland types.

**Legal Error (c): The Director Erred in stating that the text of this refinement plan does not control over the map in this refinement plan.**

This assertion appears to rely on the same faulty premise that the text of the ESEE analysis is adopted as a refinement of the Metro Plan. As described above and in the Planning Director's decision, the ESEE analysis was only adopted as findings in support of the City's Goal 5 ordinance; it is not adopted as text of the Metro Plan or as text of a refinement to the Metro Plan. The appellant also incorrectly asserts that the City's Goal 5 Plan, as a refinement plan, is "incorporated into" the Metro Plan. While it is true that the Metro Plan and the City's adopted refinement plans taken together constitute our

comprehensive plan as that term is used in the context of State law, refinement plans are not one and the same as the Metro Plan.

A useful excerpt from the Planning Director's decision at pages 6-7 helps to explain how the appellant is misreading the relationship between the ESEE analysis, the adopted Goal 5 Plan, and the Metro Plan in this case:

The applicant asserts that the ESEE analysis, which applicant argues reflects the intent to protect AMA-10 only for its value as an ash wetland, takes precedence over the WRCP map. Applicant asserts that the map and the ESEE text are inconsistent because the ESEE text states an intent to protect the wetlands as an ash grove, and the mapped wetland includes property that is not part of the ash grove.

The applicant quotes the following provision from the Metro Plan:

"In addition, it is important to recognize that the written text of the Metro Plan takes precedence over the Metro Plan Diagram where apparent conflicts or inconsistencies exist. The Metro Plan Diagram is a generalized map which is intended to graphically reflect the broad goals, objectives, and policies. As such, it cannot be used independently from or take precedence over the written portion of the Metro Plan."

The applicant generalizes this rule, asserting that any text in any document that is part of the Metro Plan takes precedence over any map that is part of the Metro Plan. However, that is not what the above-quoted Metro Plan language says. It merely states that where the Metro Plan "Diagram" conflicts with the text of the Metro Plan, the Metro Plan text controls. There is but one Metro Plan Diagram. It is found in the Metro Plan following page II-G-16. The WRCP map is not the Metro Plan Diagram.

Further, the ESEE analysis relied upon by the applicant is not part of the Metro Plan and cannot be treated as Metro Plan text. Ordinance No. 20351 is the ordinance that adopted the Goal 5 Water Resources Conservation Plan. That same ordinance created the Water Resources Conservation Overlay Zone (/WR) and adopted the code provisions related to that new overlay zone. EC 9.4900 through 9.4980. The Goal 5 Water Resources Conservation Plan was adopted as a refinement of the Metro Plan. Ordinance No. 20351, Section 2. The ESEE analysis and Eugene's Local Wetland Inventory (LWI) were adopted as findings in support of the ordinance. Section 3. However, they were not themselves adopted as part of the Metro Plan. Accordingly, any text found in the ESEE analysis does not carry the weight of Metro Plan text.

Furthermore, as noted above, even if the appellant could rely on the text of the ESEE analysis as asserted, the language itself does not support the contention that the City intended to only protect the ash grove portion of the wetland.

**Staff Recommendation**

Based on the available information and evidence, staff concludes that the Planning Director's decision was not in error or otherwise inconsistent with the applicable approval criteria at EC 9.4960. Staff recommends that the Hearings Official affirm the decision of the Planning Director denying the map correction request for the Roosevelt Middle School Site (OC2 14-1).

**Attachments**

- A: Vicinity Map
- B: Written Appeal Statement
- C: Planning Director's Decision
- D: Public Testimony

The full application file will be made available at the public hearing on this matter, and is otherwise available for review at the Eugene Planning Division offices. Staff is forwarding the Hearings Official a copy of all relevant application materials and related evidence in the record to date.

**For More Information**

Please contact Gabe Flock, Senior Planner, by phone at (541) 682-5697 or by e-mail, at [gabriel.flock@ci.eugene.or.us](mailto:gabriel.flock@ci.eugene.or.us).



**ROOSEVELT MIDDLE SCHOOL  
/ WR OVERLAY ZONE MAP CORRECTION**

Eugene School District 4J  
200 N. Monroe St. Eugene, OR 97402

STAMP  
**FOR  
INFORMATION  
ONLY**

Checked: \_\_\_\_\_ CM  
Drawn By: \_\_\_\_\_ KMK  
Checked: \_\_\_\_\_  
Project #: \_\_\_\_\_ 1410B  
Date: \_\_\_\_\_ May 5, 2014

Rev. #: \_\_\_\_\_ Date: \_\_\_\_\_  
# \_\_\_\_\_ dd/mm/yy  
\_\_\_\_\_  
\_\_\_\_\_

SHEET TITLE  
**EXISTING AND  
PROPOSED  
WETLAND  
BOUNDARY MAP  
FOR AMA-10**

SHEET #  
**L1.0**  
~~HO Agenda~~ Page 7

**NOTES**

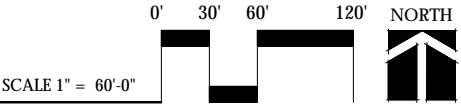
1. All survey information provided by:  
Branch Engineering  
310 5th St.  
Springfield, Oregon 97477  
P: 541-746-0637
2. The northern reach of the 60 ft. setback, measured from Amazon Creek (E-30E), is beyond the 50 ft. setback of wetland AMA-9 and AMA-7B in the boundaries of 4J's property. The setback for wetlands AMA-9 and AMA-7 are not shown for this reason.

**LEGEND**

- PROPERTY EASEMENT
- - - TAX LOT
- - - GOAL 5 WETLAND BOUNDARIES
- - - GOAL 5 WETLAND BOUNDARIES PROPOSED FOR ADJUSTMENT OF PROTECTION STATUS
- - - WETLAND SETBACK (25 ft.)
- - - WETLAND SETBACK PROPOSED FOR REMOVAL
- - - AMAZON CREEK RIPARIAN SETBACK (60 ft.)
- RIPARIAN AREA
- WETLAND AREA
- CONSERVATION AREA
- CONSERVATION AREA PROPOSED FOR ADJUSTMENT
- PHS SAMPLE PLOT LOCATION & NUMBER



**Existing and Proposed Wetland Boundary Map for AMA-10**





## LAW OFFICE OF BILL KLOOS PC

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July 2, 2014

Ms. Carolyn Burke  
Eugene Planning director  
99 W. 10<sup>th</sup> Ave.  
Eugene, OR 97401

Re: Appeal of Denial of Goal 5 Water Resources Conservation Map Correction for  
Roosevelt Middle School (OC2 14-1)

Dear Carolyn:

This is an appeal of your June 25 decision on the 4J School District application for a Goal 5 map correction. It is filed on behalf of 4J; it is supported by the enclosed filing fee and appeal form. As directed in the decision, this appeal is filed under EC 9.7605.

The application for a map correction was requested under EC 9.4960. EC 9.4960 is the correct process to use for this because the request to resolve a conflict that is internal to the Goal 5 plan – a conflict between the plan map and the plan text.

The big picture is that 4J is seeking to correct the Goal 5 Resource Site map in the Goal 5 plan to match the text in the Goal 5 plan describing the site the plan intends to protect. The map correction would fix the map by bifurcating it to include just the ash grove, which is what the text of the plan says is to be protected. Correcting the map in this way will allow 4J to relocate Roosevelt Middle School consistent with the district's adopted plan, and in a way that will allow the best use of the larger site.

The balance of this statement is organized according the required contents of an appeal, as state in EC 9.7605.

### **9.7605 Filing of Appeal of Planning Director's Decision.**

*(1) Within 12 days of the date of the mailing of the planning director's decision, the decision may be appealed to the hearings official or historic review board according to the appeal review authority specified in Table 9.7055 Applications and Review Authorities by the following:*

- (a) Applicant.*
- (b) Owner of the subject property.*
- (c) Neighborhood group officially recognized by the city that includes the area of the subject property.*
- (d) Any person who submitted written comments in regards to the original application.*
- (e) A person entitled to notice of the original application.*

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*(f) A person adversely affected or aggrieved by the initial decision.*

This appeal is filed by the applicant.

*(2) The appeal shall be submitted on a form approved by the city manager, be accompanied by a fee established pursuant to EC Chapter 2, and be received by the city no later than 5:00 p.m. of the 12<sup>th</sup> day after the notice of decision is mailed. The record from the planning director's proceeding shall be forwarded to the appeal review authority. New evidence pertaining to appeal issues shall be accepted.*

This appeal is filed with the approved appeal form and within the 12 day period.

*(3) The appeal shall include a statement of issues on appeal and be limited to the issues raised in the appeal. The appeal statement shall explain specifically how the planning director's decision is inconsistent with applicable criteria.*

The issues are stated here in a summary fashion. We look forward to supplementing the record prior to and at the public hearing, as necessary.

**Issue 1: The Director erred in concluding that the requested Goal 5 Plan map correction is not the kind of correction that can be done under the authority of EC 9.4960. That code section envisions just the kind of map correction that is requested here.**

At pages 4 and 5 of the decision, the Director concludes that the map correction process is intended to allow correction of mapping errors; it is not intended to reopen the analysis for individual sites that was done in 2005. The kind of map correction requested here seeks to resolve a conflict between the map in the Goal 5 Plan and the text of the Goal 5 Plan. Does the plan as a whole intend to protect just the ash grove, as the plan text says, or does it intend to protect both the ash grove and the adjacent grass area to the south of the ash grove? That is a question that can be answered, indeed must be answered, based on the plan language itself. The applicant is not requesting a change in the plan or new policy making about what should be protected.

**Issue 2: The Director erred in failing to correct the Goal 5 Plan map for this site, as requested. The denial is based on several legal errors that are apparent in the decision. The Hearing Official should correct the legal errors and then conclude, as the applicant asserts, that the Resource Site intended by the Goal 5 Plan to be protected is limited to the ash grove, as described in the ESEE – the text of the Goal 5 Plan.**

We list here, briefly, the several legal errors that are apparent in the Decision. If these legal errors are corrected, the Hearing Official should be able to afford the relief that is requested.

**Legal Error (a): The Director erred in reading the Goal 5 Plan maps as being the only credible source of information in the plan for locating a Resource Site. There is an**

Ms. Carolyn Burke

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erroneous assumption throughout the decision that the published maps are the only place to go to locate the footprint of a Resource Site. This is not so. The definition of Resource Site in the plan says that the plan “identifies” sites, not that it maps sites. EC 9.0500 says:

**Goal 5 Water Resource Site.** As used in EC 9.4900 to 9.4980 and 9.8030(21), the resource site as *identified* in the Goal 5 Water Resources Conservation Plan. For riparian corridor and upland wildlife habitat sites, the Goal 5 Water Resource Site includes the stream and riparian areas that may extend beyond applicable conservation setbacks. Wetland sites include only the wetland, itself. [*emphasis added*]

The term “identified” is much broader than “mapped.” Thus, one looks to the entire plan to determine what is the Resource Site and where it is located.

**Legal Error (b): The Director erred in stating that the text of the ESEE as not part of the Goal 5 Plan -- saying that it is merely findings supporting the Goal 5 Plan.** By discounting the pedigree of the ESEE in this way, the Director found it easy to ignore the text of the ESEE, which says that it is the ash grove at this site that is to be protected. The Director’s discounting of the ESSE as mere findings is plainly wrong. It does not matter what label the Goal 5 ordinance puts on the ESEE. As a matter of state law it is a part of the comprehensive plan. The status of the ESEE as a part of the plan, or as an implementing regulation, is guaranteed by the Goal 5 Rule. OAR 660-023-0040(4) says, in relevant part: “The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.” More specifically, the ESEE is text of the refinement plan, which is incorporated into the Metro Plan.

**Legal Error (c): The Director erred in stating that the text of this refinement plan does not control over the map in this refinement plan.** This erroneous assumption allowed the Director to completely discount the text of the ESSE, even assuming that it is a part of the plan. As a refinement plan of the Metro Plan, the Goal 5 Plan is incorporated into the Metro Plan. The text of refinement plans control over the Metro Plan diagram because they are incorporated into the Metro Plan. See *Opus Development Corp. v. City of Eugene*, 30 Or LUBA 360, 376, *aff’d* 141 Or App 249 (1996). If that is so, then the text of the refinement plan certainly controls over the maps in the refinement plan.

So, based on all of the legal errors above, the applicant requests the Hearing Official to: Determine that the text of the Goal 5 Plan, in the ESEE, states the intent to protect the “ash grove” at this location. The Goal 5 map shows a larger area. The map is by definition generalized. The text states the plan’s ultimate policy choice for this location. The text controls over the graphic. Based on this information, all of which is included in the Goal 5 Plan, the Hearing Official should direct the city staff to correct the mapping error to make the map match the text, which says to protect the ash grove at this site.

Ms. Carolyn Burke  
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We look forward to elaborating and providing more information at the public hearing.

Sincerely,

*Bill Kloos*

Bill Kloos

Encl. Form; Filing Fee Check





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## **FINDINGS AND DECISION OF THE PLANNING DIRECTOR:**

### **DENIAL OF A GOAL 5 WATER RESOURCES CONSERVATION PLAN MAP CORRECTION FOR ROOSEVELT MIDDLE SCHOOL (OC2 14-1)**

#### **Application Summary:**

The applicant's request for correction of a mapped Goal 5 wetland (site AMA-10) on the Roosevelt Middle School Site is denied.

#### **Applicant:**

Jon Lauch, Director of Facilities Management, Eugene School District 4J

#### **Applicant's Representative:**

Colin McArthur, AICP, Cameron McCarthy, Phone: 541-485-7385

#### **Lead City Staff:**

Gabe Flock, Senior Planner, Phone: 541-682-5697

#### **Subject Property/Zoning/Location:**

Tax Lot 100 of Assessor's Map 18-03-05-32; Zoned Public Land with the Water Resource Overlay (PL/WR); Located at 680 East 24<sup>th</sup> Avenue, between the Amazon Parkway and Hilyard Street.

#### **Relevant Dates:**

Application submitted on May 6, 2014; deemed complete on May 20, 2014; decision issued on June 25, 2014.

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### **Background and Present Request**

In 2005, the City conducted a Goal 5 analysis and mapped the City's Goal 5 water resources, including riparian corridors, wildlife habitat, and wetlands. As part of that process, the City identified approximately 618 acres of significant wetlands. The wetland on the subject property, identified in that process as resource site AMA-10, was determined to be significant. The City thus proceeded to conduct an ESEE analysis to determine what level of protection the wetland should be afforded. It was determined to limit conflicting uses on the resource site.

The present application is a request for Goal 5 Water Resources Conservation Plan Map Correction, subject to the Type II land use application process. Relevant application procedures

including public notice requirements and the City's decision-making process for this type of request are primarily addressed at Eugene Code (EC) 9.7200-9.7230.

The relevant application requirements and approval criteria for this request are primarily addressed at EC 9.4960. The following evaluation includes a determination that the applicant's request is outside the scope of the approval process afforded by EC 9.4960, along with findings and conclusions determining that the request does not meet the applicable approval criteria.

Additional details of the alleged mapping error are included in the applicant's materials and site plans, included in the application file for reference.

### **Public Notice**

Public notice of the application was mailed on May 28, 2014, in accordance with Type II application requirements. No public testimony was received in response to the public notice.

### **Evaluation**

The following findings demonstrate that (1) the alleged error is not a mapping error that can be corrected under the process provided by EC 9.4960, and (2) even if it could, the alleged mapping error does not comply with the applicable approval criterion set forth in EC 9.4960(3)(b).

The provisions of EC 9.4960 apply in certain circumstances to correct an alleged error in the mapping of a Goal 5 resource site on the Goal 5 Water Resources Conservation Plan (WRCP) Map. The first issue that must be addressed is whether the error alleged by applicant is even the type of error that can be corrected using the procedures set forth in EC 9.4960.

### **Scope of EC 9.4960**

The applicant asserts that the process of identifying the location of a Goal 5 Wetland Resource Site is synonymous with and inseparable from identifying its boundary. Initial Submittal at 19. It asserts that the City erred in mapping the location of Goal 5 Resource Site AMA-10 as identified on the WRCP Map due to incorrectly applying the Goal 5 protection designation to the entire wetland Resource Site.

AMA-10 is a relatively small wetland (1.4 acres) found at the southeastern corner of 24<sup>th</sup> Avenue and Amazon Parkway. The northern portion of the wetland is covered in an ash grove. The southern portion has no ash trees. As explained in more detail below, the applicant asserts that the wetland was only intended to be protected as an ash grove wetland, and that the southern portion of the site should not have been afforded the protective status afforded the northern portion. Accordingly, the WRCP map should only have designated the northern portion of the site for protection. The applicant asserts that this alleged error is a "mapping error" that can be corrected using the process set forth in EC 9.4960.

In determining the scope of EC 9.4960, the Planning Director must interpret the code provision and, using the Oregon Supreme Court's analysis set forth in *PGE v. BOLI* and its progeny, review the text, context and legislative history in order to determine what the council intended when it

adopted the provision. *PGE v. Bureau of Labor and Industries*, 116 Or App 356, 842 P2d 419 (1992).

#### Text/Context

The first sentence of EC 9.4960 provides, in relevant part: “The provisions of this section apply in the case of an alleged error in the mapping of a Goal 5 resource site on the Goal 5 Water Resources Conservation Plan Map.” That sentence, intended to explain what types of applications are subject to EC 9.4960, provides little guidance in determining what exactly constitutes an error in mapping for purposes of EC 9.4960. The section provides two separate processes: one for situations where a correction is based solely on aerial photography or geographic information system (GIS) data, and the other where the correction is sought based on information beyond aerial photos or GIS data. For the former, the Type I process is employed, and for the latter, Type II.

The language of the approval criteria found at EC 9.4960(2)(b) and (3)(b) does little to shed light on the scope of the provision. The criteria in both sections require that “at the time the city adopted the Goal 5 Water Resources Conservation Plan Map, that map showed an incorrect location of the identified Goal 5 Water Resource Site.” The requirement in the approval criteria that the WRCP plan map showed an “incorrect location” of the identified resource site at the time the city adopted the map narrows the universe of possible application to some degree. However, it is still not clear what types of mapping errors can be corrected using the process set forth in EC 9.4960. The text of the provision does little to assist in determining the appropriate scope of EC 9.4960; we therefore turn to the context.

EC 9.4960 is titled: /WR Water Resources Conservation Overlay Zone – Map or Zone Error. It is found in the chapter of the Eugene land use code that provides for and describes the city’s water resources conservation overlay zone. EC 9.4900 et seq. The /WR overlay zone is intended to provide conservation of, among other things, significant wetlands that are included in the city’s adopted Goal 5 inventory of significant resource sites. EC 9.4900. The section explains what elements of the particular resource are part of the conservation area, provides what uses are allowed and prohibited in the conservation areas zone, and allows adjustments to some of the provisions of the section. EC 9.4960 then provides a process for correcting alleged errors in mapping of a Goal 5 resource on the Goal 5 Water Resources Conservation Plan Map.

A brief summary of the process used to determine and map the Goal 5 resources and to adopt the provision at issue will help to better understand the context of the map correction provision. Oregon Administrative Rule (OAR) 660-023-0100(2) requires that local governments, when adopting a Goal 5 inventory of significant wetland resource sites, start with a Local Wetlands Inventory (LWI), prepared using the standards and procedures set forth in OAR Chapter 141 (administrative rules of the Department of State Lands (DSL)). OAR Chapter 141 provides processes and guidelines for creation and adoption of the LWI. The wetlands that meet the criteria are determined to be significant wetlands and are required to be included in the Goal 5 inventory of significant wetlands.

The LWI for areas inside the UGB was approved by DSL for consistency with OAR Chapter 141 on January 14, 2005. Application, Exhibit D (SWI Map 17). With regard to AMA-10, the City determined that the resource site was significant and then went on to conduct the ESEE analysis to determine what level of protection to afford it.<sup>1</sup> As explained above, the City considered the entire resource site and decided to at least partially protect the site from conflicting uses. That determination was based on a very in-depth, detailed analysis of the site and the ESEE consequences of prohibiting or allowing conflicting uses on the site. Given the text and context, including an understanding of the detailed process used to initially adopt the map, one must assume that the City Council meant to limit the use of the map correction process in some way. It makes sense to conclude that the city council intended to provide a process to allow corrections to mapping errors, but not to open up each and every site to second guessing the analysis that was done in 2005.

The choice to use a Type II process provides some additional guidance as to the council's intent regarding the scope of EC 9.4960. The Type II process is reserved for quasi-judicial decisions that require a limited amount of discretion. The process provides a public hearing only if the initial decision, generally issued by the Planning Director, is appealed. The final local decision in the Type II process is issued by a Hearings Official, not the City Council. A Type IV or Type V process, on the other hand, includes an initial public hearing by the Planning Commission, which makes a recommendation to the City Council for the final determination. The Type IV or V decisions generally involve some policy determination, hence the final decision by the City Council.

Because the original Goal 5 analysis in 2005 was adopted by the City Council, it would be necessary that any substantive revisitation of that analysis be reviewed by the city council in a Type IV or V process. The City Council's choice with regard to EC 9.4960(3) to provide only a Type II process, rather than a Type IV or Type V process, suggests that the Council meant to limit applications under EC 9.4960(3) to those that involved a very limited amount of discretion. The legislative history, as explained below, supports this interpretation.

#### Legislative History

The question of the scope of EC 9.4960 was considered by the Planning Commission. In response to a public comment to the Planning Commission suggesting that a Type III process was appropriate, staff explained that it believed the Type III process was not warranted because the process would only be used where it was shown that the /WR overlay was incorrectly applied in the first place. The Planning Commission and, subsequently the City Council, agreed with that approach and retained the Type II process under subsection (3).

As the context and legislative history make clear, EC 9.4960 is intended only to be used for errors in mapping, and not for errors in analysis. The record reflects that staff declined to

<sup>1</sup> We do not understand the applicant to assert that the subject wetland was not significant or that it should not have appeared on the LWI. If that were the case, the Planning Director would have little trouble dispensing with that allegation as a complete wetland delineation was subsequently prepared for the site, and the wetland was shown to cover an even larger area than that shown on the LWI. Application, Exhibit G (Wetland Delineation Report) Figure 7A; Exhibit H (Request for Reissuance of a JD for Roosevelt Middle School) Figure 1.



recommend a more involved process because the provision was only intended to be used where there was a relatively clear mapping error. If the provision were intended to allow a process for a complete re-analysis of the underlying information, a Type IV or Type V process would have been appropriate.

Based on the text, context and legislative history, the Planning Director concludes that the council intended the process set forth in EC 9.4960 to be available as a means of correcting only certain mapping errors. In doing so, the council necessarily meant to limit the scope of that provision to a confined universe of situations where the error in mapping was relatively clear and could be discerned simply by reference to the documentation before it.

Given the history of the adoption of the Goal 5 water resources conservation plan and code provisions implementing that plan, this interpretation is the only one that makes sense. If a property owner could characterize the erroneous analysis of existing data as a mapping error, then there would be no limit to what would be considered a mapping error for purposes of EC 9.4960. Such an interpretation would allow an end run around the Goal 5 process. Each and every parcel that has the /WR overlay designation would be subject to challenge under EC 9.4960. An alleged error in analysis of the available data is not a mapping error. Rather, that is a challenge that properly should have been raised at the time the Goal 5 plan was adopted.

Here, the applicant asserts that the City made an error in its analysis of the data in front of it and, as a result, the mapping of the boundaries of the protected wetland was in error. This application does not allege a mapping error that can be corrected under the EC 9.4960 process. An example of a mapping error that would be subject to EC 9.4960 is the situation where the underlying information supports a conclusion that the wetland would be mapped in one location, but the mapping erroneously shows the wetland mapped in an entirely different location. An assertion that the City made an error in its analysis of the data that resulted in a piece of land erroneously being afforded protection is not a mapping error subject to correction under EC 9.4960. The applicant's attempt to challenge the City's prior analysis in this application is a collateral attack of the City's 2005 ordinance. The only remedy for the applicant at this point is to seek a legislative amendment, which would allow the City Council to re-analyze the data and determine what protections are appropriate.

### Conclusion

Based on the foregoing analysis, the subject application is not appropriate for processing under the procedures set forth in EC 9.4960. However, the Planning Director will analyze the application under the applicable criteria in the event this decision is appealed, and the hearings official disagrees with the planning director's interpretation of the scope of EC 9.6940.

### **EC 9.4960—Applicable Criteria**

The sole approval criterion for this application is EC 9.4960(3)(b)1.:

**"At the time the city adopted the Goal 5 Water Resources Conservation Plan Map, that Map showed an incorrect location of the identified Goal 5 Water Resource Site."**

Assuming, for the sake of argument, that the subject application falls within the scope of EC 9.4960 and is an appropriate allegation of mapping error, the planning director must determine whether “at the time the city adopted the Goal 5 [WRCP] Map, that Map showed an incorrect location” of AMA-10. Applicant’s arguments are set forth in bold below.

#### Applicant’s First Argument

Both the WRCP Map for this site and the ESEE Analysis for this site are a part of the City’s Goal 5 Program, which is an element of the Metro Plan (i.e., City’s adopted comprehensive plan). To the extent that the Map suggests that the protected Resource Site is larger than the ash grove, which is identified for protection under the ESEE Analysis, there is a conflict between the City’s Goal 5 Map and the Goal 5 Plan text. Where there is such a conflict between the Map and text, the Metro Plan dictates that the text controls. The Map requires correction to reflect the text of the ESEE Analysis, which the WRCP incorporates by reference to identify locally significant wetlands.

#### Discussion

The applicant asserts that the ESEE analysis, which applicant argues reflects the intent to protect AMA-10 only for its value as an ash wetland, takes precedence over the WRCP map. Applicant asserts that the map and the ESEE text are inconsistent because the ESEE text states in intent to protect the wetlands as an ash grove, and the mapped wetland includes property that is not part of the ash grove.

The applicant quotes the following provision from the Metro Plan:

“In addition, it is important to recognize that the written text of the Metro Plan takes precedence over the Metro Plan Diagram where apparent conflicts or inconsistencies exist. The Metro Plan Diagram is a generalized map which is intended to graphically reflect the broad goals, objectives, and policies. As such, it cannot be used independently from or take precedence over the written portion of the Metro Plan.”

The applicant generalizes this rule, asserting that any text in any document that is part of the Metro Plan takes precedence over any map that is part of the Metro Plan. However, that is not what the above-quoted Metro Plan language says. It merely states that where the Metro Plan “Diagram” conflicts with the text of the Metro Plan, the Metro Plan text controls. There is but one Metro Plan Diagram. It is found in the Metro Plan following page II-G-16. The WRCP map is not the Metro Plan Diagram.

Further, the ESEE analysis relied upon by the applicant is not part of the Metro Plan and cannot be treated as Metro Plan text. Ordinance No. 20351 is the ordinance that adopted the Goal 5 Water Resources Conservation Plan. That same ordinance created the Water Resources Conservation Overlay Zone (/WR) and adopted the code provisions related to that new overlay zone. EC 9.4900 through 9.4980. The Goal 5 Water Resources Conservation Plan was adopted as a refinement of the Metro Plan. Ordinance No. 20351, Section 2. The ESEE analysis and

Eugene's Local Wetland Inventory (LWI) were adopted as findings in support of the ordinance. Section 3. However, they were not themselves adopted as part of the Metro Plan. Accordingly, any text found in the ESEE analysis does not carry the weight of Metro Plan text.

Finally, the planning director does not agree with the applicant that the language of the ESEE analysis upon which the applicant relies supports the contention that the city intended only to protect the ash wetland. The language applicant points to, is found in a brief summary description of the site, not in a section of the ESEE analysis that purports to outline the purposes for which a particular resource site is to be protected.

Exhibit B to Ordinance No. 20351 is the Conflicting Uses & ESEE Analysis. That document contains 24 Sections. Following a brief introduction, the analysis describes the impact areas and then provides documentation of conflicting uses and ESEE consequences that apply to every Goal 5 site. The analysis then includes individual sections that contain supplemental analyses that provide greater detail of specific resource sites and groups of resource sites. Sections 7 through 24. Supplemental Analysis 23 includes analysis on the Lower Amazon Creek, Lower Amazon Wetlands, Westmoreland Wetlands, and Tugman Riparian. The subject wetland, AMA-10, is part of the Lower Amazon Wetlands, which include AMA-7, AMA-10, AMA-11, AMA-12 and AMA-16. Subsection 23.1 provides a brief description of the resource sites. Applicant's assertion that the wetland was mapped incorrectly relies largely on language found in this "Site Description" portion of Section 23.

The Amazon Park Wetlands, of which the subject wetland is a part, are described in Section 23.1 (Site Description for the Lower Amazon Creek, Lower Amazon Wetlands, Westmoreland Wetlands, and Tugman Riparian) as follows:

**"Wetland AMA-10 is a small ash wetland located at 24<sup>th</sup> Avenue, partly within the park, and partly on property owned by School District 4J. Like the ash grove within site AMA-16, this grove contributes to the habitat structure and [diversity] adjacent to Amazon Creek. Wetland AMA-11B, located near the pool, is a recently restored wetland created in part as mitigation for wetlands filled within Tugman Park. Wetland AMA-12, located near 29<sup>th</sup> & Hilyard Street, is another Oregon ash grove adjacent to Amazon Creek, which contributes habitat and structural diversity to the habitat system of upper Amazon Creek."** ESEE Analysis. (**bolded emphasis added**). Section 23.1.

From the language highlighted above, applicant concludes that the City Council had a clear intent only to protect the wetland for its value as an ash wetland and for no other purpose. Applicant attributes too much significance to the highlighted language. The site description section is only intended as a brief summary of the attributes of the particular wetland or resource site being analyzed. A quick perusal of the site descriptions of other resource sites reveals how very brief and summary those site descriptions are. The Planning Director does not agree that the above-quoted language is sufficient to support applicant's contention that the intent was to protect AMA-10 only for its value as an ash grove. In fact, the detailed ESEE analysis for this wetland supports the opposite conclusion. Section 23.5, ESEE Conclusions and

Recommendations for the Amazon park wetlands, provides that the Amazon Park wetlands are some of the more valuable wetlands on the Inventory:

“(2) Amazon Park wetlands:

“(a) Amazon Park wetland prairie (AMA-16), Amazon ash grove (AMA-9);

“(b) Amazon park wetlands (AMA-10, AMA-11B, AMA-12A,B):

“Limiting conflicting uses recommended. Key resource characteristics indicate that **these wetland sites (AMA-16; AMA-9; AMA-10; AMA-11B; AMA-12A,B) are some of the more valuable wetlands in the Inventory. They provide a diversity of wetland types, such as wet prairie and ash wetland, and have high connectivity, being adjacent to the Amazon Channel.** Due to these resource characteristics, these are *relatively higher quality* sites. Based on that, and the ESEE analysis above, resource values in these sites are of greater importance to the community than the conflicting uses that would occur here. The combined negative economic, social, environmental and energy consequences of *fully allowing* conflicting uses within these sites outweigh the positive consequences. In addition, the positive economic, social, environmental and energy consequences of *prohibiting* conflict uses within these sites outweighs the negative consequences. However, *limiting* most conflicting uses would adequately protect the resource while allowing for some uses with minimal impacts to the resource. Therefore, the positive economic, social, environmental and energy consequences of *limiting* conflicting uses within these sites outweigh the negative. The positive economic, social, environmental and energy consequences of *limiting* conflicting uses outweigh the positive consequences that would result if all conflicting uses were prohibited. Therefore, limiting conflicting uses is recommended for these sites.” (*italicized emphasis in original; bolded emphasis added*).

The text of the ESEE analysis does not support applicant’s contention that only the ash wetland was meant to be protected.

### Conclusion

The ESEE analysis was not adopted as part of the Metro Plan. Rather, the ordinance clearly states that the ESEE analysis and LWI were merely adopted as findings in support of the ordinance. Section 3. Accordingly, even assuming the applicant were correct that the text of the ESEE analysis supported its position that the intent was to only protect the ash wetland, that language would not control over the WRCP Map, which is adopted as a refinement to the Metro Plan.

### Applicant’s Second Argument

The materials the City prepared for its Goal 5 program clearly demonstrate the City’s intent to protect the ash grove portion of the wetland at the subject property.



## Discussion

The applicant outlines several ways in which the City misinterpreted the data, which led to the alleged mapping error. The Planning Director does not agree that those allegations, even if true, would justify correcting the WRCP map. First, as explained above, the alleged erroneous analysis is not the type of “mapping error” that can be corrected through EC 9.4960. And second, applicant’s arguments are based on an erroneous assumption that the City meant to protect AMA-10 only for its attributes as an ash wetland. That said, the Planning Director will address each of applicant’s substantive arguments in turn.

### **(1) The City failed to recognize the distinction between wetland types—wetland prairie and ash grove wetland.**

The applicant again relies on the site description of AMA-10 as an ash grove wetland to support its assertion of a mapping error. The applicant compares AMA-10 to nearby wetlands, AMA-9 and AMA-16, which are described as including both wetland prairie and ash grove. The applicant asserts that AMA-10 was not similarly described as including both types of wetlands, and therefore, must only be considered for its ash wetland values.

As explained above, applicant assumes too much from the language in the ESEE analysis that provides a brief description of the subject wetland. Once again, the Planning Director does not read the description in the ESEE analysis of the wetland as a small ash grove wetland to mean that the City had a clear intent to only protect the wetland for purposes of protecting the ash grove. The fact that AMA-9 and AMA-16 were generally described to include both types of wetlands, and AMA-10 was not, is not enough to find that the City erred in its analysis of AMA-10 or that the City only intended to protect AMA-10 as an ash grove wetland.

### **(2) The City inconsistently applied its methodology for identifying protected wetlands based on wetland characteristics.**

The applicant compares the City’s treatment of AMA-10 to its treatment of a nearby wetland, AMA-11, and concludes that there is a mapping error because the City inconsistently applied its methodology for identifying protected wetlands based on wetland characteristics.

AMA-11 lies to the southeast of AMA-10 and is significantly larger than AMA-10. AMA-10 is 1.4 acres and AMA-11 is 8.4 acres. At some point in the City’s analysis of the resource site, AMA-11 was split into two separate resource sites: AMA-11A and AMA-11B. See map for location. The applicant asserts that the AMA-11A and AMA-11B were treated as separate wetlands “by reason of differences in vegetation characteristics and habitat value.” Initial Submittal 26. With regard to AMA-11A, the City determined that the resource site was of relatively low quality and fully allowed conflicting uses. With regard to AMA-11B, the City limited conflicting uses. One of the applicant’s arguments seems to be that the City should have bifurcated AMA-10, like it did AMA-11, and should have fully allowed conflicting uses on the southern portion of the site.

The Planning Director does not agree that the mere fact that the City bifurcated AMA-11 supports the applicant's contention that the City erred by not also bifurcating AMA-10. First, AMA-11 was a significantly larger wetland than AMA-10. Second, applicant does not demonstrate that the fact that there were two different wetland types in AMA-10 necessarily dictates bifurcating the wetland. However, even if the applicant is correct that the wetland should have been bifurcated because the two sections represented two different wetland types that does not support applicant's assertion that the southern portion of the wetland would not be entitled to protection. Both wetland types, ash grove wetland and prairie wetland, may be entitled to protection, depending on other characteristics and identified conflicting uses.

Finally, bifurcating AMA-10 does not necessarily mean that conflicting uses would be fully allowed on the southern portion, as was determined for AMA-11A. The site description for AMA-11A finds that although the site has wetland characteristics and is near Amazon Creek, it no longer supports native plants. The field is in close proximity to Amazon pool, and a large portion is located a greater distance from the Amazon Creek than is any portion of AMA-10. The mere fact that AMA-11 was bifurcated and the two portions were treated differently is not sufficient to support a conclusion by the Planning Director that the mapping was in error. Further, it certainly is not enough to justify the action that applicant requests, which is that the mapping be changed to reflect two separate resource sites and that the southern portion be determined to fully allow conflicting uses (i.e. not protected at all). Even if the Planning Director agreed with the applicant that the wetland should be bifurcated, it would be necessary to then do the analysis on the southeastern portion of the wetland alone to determine what level of protection to assign to it.

### **(3) The City inconsistently applied its methodology for identifying protected wetlands based on connectivity**

Applicant asserts that the City identified connectivity as a priority in determining the quality of a particular wetland. Certainly, this is true. Table 23.4.1 in the ESEE Analysis identifies key resource characteristics of each listed resource site, including natural vegetation, fish habitat, water quality, and connectivity, among others. AMA-10 and AMA-11B were given "HI" connectivity ratings, while AMA-11A was given a "LO" connectivity rating. The applicant asserts that AMA-11B was given a high connectivity rating "because of its connection to Amazon Creek by way of a culvert under the bike path." Conversely, according to applicant, AMA-11A was given a low connectivity rating "because it has no direction (sic) to Amazon Creek unlike wetland AMA-11B had." Initial Submittal at 29. The applicant asserts that AMA-10 should have been given a low connectivity rating because it is separated from the Amazon Creek by a concrete bike path and has no connection to Amazon Creek via a culvert.

The record does not support the applicant's assertion that the "LO" connectivity rating was attributed to AMA-11A because it was not connected to the Amazon Creek by a culvert, as AMA-11B was. The reason for the low connectivity rating is not provided in the record. Accordingly, it is impossible to say with any degree of certainty that the City erroneously or inconsistently determined the connectivity rating for AMA-10.

#### **(4) The City was inconsistent in assigning protective status based on diversity of wetland types**

Finally, again with regard to the diversity of wetland types, Applicant points to numerous other wetlands on the inventory where the City decided to fully allow conflicting uses. Applicant points out that some of those resource sites included sub-site labels (i.e., were divided into two or more separate resource sites). The Planning Director understands the applicant to argue that there were other instances where resource sites were divided and conflicting uses were fully allowed on some portions of those sites. The Planning Director does not agree that those other instances support or require the conclusion that AMA-10 should have been treated similarly or that not doing so constitutes a mapping error.

#### **(5) Inaccuracies in tax lot identification on two maps cast doubt on the validity of the inventory**

In support of its contention that the WRCP presents incorrect information, the applicant points to two maps (WRCP Map 10 of Section IV and LWI Map Sheet 17). Those two maps, applicant asserts, show a tax lot boundary where no separate tax lot exists. The applicant argues that the error casts doubt on the accuracy of other aspects of the inventory and the Goal 5 analysis. The Planning Director does not agree. There are numerous maps in the record that do not show the tax lot in question. The fact that that line showed up on those two maps in no way casts doubt on the substantive analysis

#### **Conclusion**

The applicable approval criterion requires a finding that, at the time the WRCP map was adopted, the map showed an “incorrect location” of AMA-10. If approved, the city would be ordered to simply correct the map. EC 9.4960(4). Additional analysis would be required in order to simply change the map. The Planning Director does not agree that the documentation and argument presented by applicant demonstrates that the map showed an “incorrect location” of AMA-10.

#### **Final Conclusion**

As explained above, applicant assumes too much from the language in the ESEE analysis that provides a brief description of the subject wetland. The Planning Director does not read the description in the ESEE analysis of the wetland as a small ash grove wetland to mean that the City had a clear intent to only protect the wetland for purposes of protecting the ash grove itself. Additionally, even if true, such a demonstration does not constitute a “mapping error” for purposes of EC 9.4960. Applicant’s argument raises an alleged substantive error that would have had to have been challenged at the time the ordinance was adopted.

It may be that, upon re-analysis of the value of the proposed conflicting use (i.e. use for a new school site), the ESEE analysis would produce a conclusion that the conflicting use deserves higher consideration. However, that is an analysis that can only be done in a process higher than Type II, not a mapping error determination.

**Decision**

The applicant's request is hereby denied.

Pursuant to EC 9.7220(3), the Planning Director's decision regarding this Type II application is effective on the 13<sup>th</sup> day after notice of the decision is mailed, unless appealed according to the procedures in EC 9.7605.

This approval does not relieve the applicant of complying with other applicable provisions of the Eugene Code or Oregon Revised Statutes, which may otherwise govern the development of the subject property.

Decision By: Carolyn Burke 6.25.14  
Carolyn Burke, Eugene Planning Director (date)

RECEIVED

JUL 15 2014

CITY OF EUGENE  
BUILDING & PERMIT SVCSBonnie Brunken  
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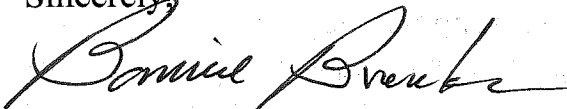
Attn: Gabe Flock

Having lived in this neighborhood off and on since I was 12 (now 77) I consider myself an expert on Amazon Park, the Creek, the Ash Grove, the trees on the other side of the creek, and the history of water, sometimes flooding, in this area. This end of the valley is one big wetland which has gradually been reduced to about 60 feet on either side of Amazon Creek, and even that is under pavement beginning about 24<sup>th</sup> Avenue.

The school district is now appealing the city's continued protection of about an acre of land south of the 24<sup>th</sup> Avenue tennis courts so that the rebuild of Roosevelt Middle School can extend onto the protected wetlands. Not a good idea! Water draining through wetlands helps to replenish the diminishing aquifer under Eugene (is your house settling?), provides flood control, and provides water for the deep roots of the trees Eugeneans treasure. The vast majority of all this essential, productive activity has already been interfered with by the tremendous growth of Eugene and the paving of so much of the south end of the valley.

What often looks like ugly, cracked unfertile ground is absolutely essential to the health of the city. Those who have almost fanatically guarded the lands along the Amazon Creek and as they approach Fern Ridge Lake understand the importance of wetlands, and this small protected area on this end of the valley must be left alone to do its job. The planet knows what it's doing and it doesn't involve more pavement or buildings!

Sincerely,



Bonnie Brunken